

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 2368/2025

Reserved on: 29.08.2025

Pronounced on: 11.09.2025

- 1 Sher-e-Kashmir University of Agricultural Sciences & Technology
Jammu
- 2 The Registrar, Sher-e-Kashmir University of Agricultural Sciences &
Technology, Main Campus Chatha Jammu
3. The Comptroller, Sher-e-Kashmir University of Agricultural Sciences
& Technology, Main Campus Chatha Jammu

Petitioners

Through: - Mr.Anil Khajuria Advocate

Vs.

- 1.Sat Paul son of Sh. Maheshwar Dass, resident of House NO. 89
Rehari Chungi Tehsil and District Jammu
- 2 Pankaj Kumar, son of Parkash Chander, resident of Parashar Ashram
Thanda Paddar, Industrial Estate Udhampur..

...Respondent(s)

Through: - Mr.Abhinav Sharma Sr. Advocate with
Mr. Abhimanyu Sharma Advocate.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR,JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR JUDGE**

JUDGMENT

Sanjeev Kumar, J

1 Sher-e-Kashmir University of Agricultural Sciences and Technology, Jammu ["SKUAST-J"], along with its Registrar and Controller, have approached this Court by way of present petition filed under Article 226 of the Constitution of India, challenging an order and judgment dated 28.02.2025 passed by the Central Administrative Tribunal, Jammu Bench, Jammu ["the Tribunal"] in

T.A No. 204/2024 (SWP No.2135/2018), titled *Sat Pal and another vs. State of Jammu and Kashmir and others*, whereby, the Tribunal, while allowing the aforesaid TA, has directed the petitioners herein to re-fix the pay scale of the respondents herein at Rs. 5000-8000 (now revised to Rs. 9300-34800 with Grade Pay of Rs. 4200), w.e.f. 21.04.2003, i.e., the date of their appointment, along with all consequential benefits, including arrears of salary.

2 Before we advert to the grounds of challenge urged by Mr. Anil Khajuria, learned counsel appearing for the petitioners, we deem it appropriate to take note of a few relevant facts.

3 The respondents were appointed as *Artist-cum-Photographers* in SKUAST-J vide University Order No. 05 (Est) of 2003, dated 21.04.2003, in the then pay scale of Rs. 3050-4590. In the year 1998, two separate Universities, namely SKUAST-K (Kashmir Division) and SKUAST-J (Jammu Division), were created. The Board of Management of SKUAST-J, in its first meeting held on 15.06.2000, created various posts including two posts of *Artist-cum-Photographer* with the pay scale of Rs. 3050-4590, as is evident from University Order No. 106 of 2000 dated 15.06.2000. The said posts were advertised in the prescribed scale, to which the respondents applied, and on being selected, were appointed, accordingly. The respondents accepted their appointments in the pay scale of Rs. 3050-4590 (pre-revised) and continued to discharge their duties without any protest or demur. It was only in the year 2008, the respondents filed SWP No. 1009/2008 before this Court, seeking a writ of mandamus directing the petitioners herein to grant them the pay scale of Rs. 5000-8000

(pre-revised) from the date of their appointment. The said writ petition, however, was dismissed as withdrawn vide order dated 11.10.2018, with liberty reserved to the respondents to file a fresh writ petition only on a fresh cause of action. Immediately thereafter, the respondents filed a fresh petition (SWP No. 2135/2018), seeking, *inter alia*, a direction to the petitioners to upgrade the pay scale of the post of *Artist-cum-Photographer* to Rs. 5000-8000 (pre-revised) retrospectively from the date of their appointment, together with consequential benefits including arrears of salary. Upon enactment of the Jammu and Kashmir Reorganisation Act, 2019, the said writ petition came to be transferred to the Tribunal and was registered as TA No. 204/2024.

4 The aforesaid TA was contested by the petitioners herein by filing their written statement before the Tribunal. It was submitted that two posts of *Artist-cum-Photographer* in SKUAST-J were created by the Board of Management of SKUAST-J in its first meeting held on 15.06.2000, and the same were duly notified for making selection of eligible candidates. The respondents participated in the selection process, and emerged successful. Resultantly, both the respondents were appointed as *Artists-cum-Photographers* in the pay scale of Rs. 3050-4590 (pre-revised) vide separate orders of appointment dated 21.04.2003. It was also the plea taken by the petitioners therein that since the earlier writ petition filed by the respondents, i.e., SWP No. 1009/2008, seeking similar relief, stood dismissed as withdrawn, as such, the subsequent petition on the same cause of action and for the same relief was barred by the principle of *res judicata*. The petitioners also pleaded before the Tribunal that during the pendency of the said

writ petition, and taking cognizance of the representation made by the respondents and the grievance projected therein, the matter regarding up-gradation of the posts of *Artist-cum-Photographer* was placed before the Board of Management in its 26th meeting and, upon its approval, was further placed before the 15th University Council meeting under Agenda Item No. 4 (15). The University Council approved the up-gradation of the posts in question from Rs. 3050-4590 to Rs.5000-8000 (pre-revised), now revised to Rs.9300-34800 with Grade Pay of Rs. 4200, but only with prospective effect. The decision of the University Council was assented to by the Chancellor, and in consequence thereof, SKUAST-J issued Notification dated 01.02.2017, upgrading the pay scale of the posts in question to Rs. 5000-8000 (pre-revised), prospectively.

5 The respondents, however, were not satisfied with the decision of the petitioners granting the benefit of up-gradation only prospectively and, therefore, assailed the decision of the University by way of SWP No. 2135/2018, which, upon transfer to the Tribunal after the enactment of the Jammu and Kashmir Reorganisation Act, 2019, came to be registered as TA No. 204/2024. It is this TA which has been disposed of by the Tribunal vide the judgment impugned in this petition.

6 The judgment impugned is challenged by the petitioners primarily on the ground that the Tribunal has not appreciated the fact that the posts of *Artist-cum-Photographer* in the pay scale of Rs. 3050-4590 were created by the SKUAST-J pursuant to the decision taken by its Board of Management in the first meeting held on

15.06.2000, and that the same were also notified through a Advertisement Notification in the said pay scale. The Tribunal also did not appreciate that the appointment of the respondents as *Artists-cum-Photographers* was made in the grade of Rs. 3050-4590, which appointment was duly accepted by the respondents by submitting their joining reports and discharging their duties for almost five years.

7 The impugned judgment is also assailed on the ground that the Tribunal did not consider or decide a specific objection raised by the petitioners regarding the maintainability of the petition, on the ground that earlier writ petition filed in the year 2008, seeking similar reliefs, stood dismissed as withdrawn.

8 *Per contra*, Mr. Abhinav Sharma, learned senior counsel appearing for the respondents would submit that, in terms of the University Statutes, the pay scale of the post of *Artist-cum-Photographer* was revised to Rs. 5000-8000 by Notification No. 01 of 1994 dated 08.04.1994. It is argued that despite being aware that the post in question carried the pay scale of Rs. 5000-8000, the petitioners notified it for selection in the lesser pay scale of Rs. 3050-4590, which was contrary to the Statutes. Learned senior counsel would further argue that in SKUAST-K, one Masood Tabish was appointed as *Artist-cum-Photographer* in the pay scale of Rs. 5000-8000 vide order dated 26.04.2006, whereas the respondents herein were continued in the pay scale of Rs. 3050-4590. Summing up his arguments, learned senior counsel would submit that the Tribunal has rightly appreciated the controversy and has, by the judgment impugned, rendered justice to the respondents.

9 Having heard learned counsel for the parties and perused the material on record, a few facts which are not in dispute need to be noticed at the outset.

10 SKUAST was created under the Sher-e-Kashmir Universities of Agricultural and Technological Sciences Act, 1982 [“the Act of 1982”]. Initially, there was only one University for the entire erstwhile State of Jammu and Kashmir, headquartered at Srinagar. However, by Act No. VII of 1998, the Act of 1982 was amended with effect from 20.09.1999 to pave the way for the creation of two Agricultural Universities; one in the Kashmir Division and the other in Jammu Division, each having jurisdiction over its respective territorial division of the State.

11 The University in the Kashmir Division was named as *SKUAST-Kashmir* (SKUAST-K), and the University in the Jammu Division was named as *SKUAST-Jammu* (SKUAST-J). In terms of Section 50-B of the Act of 1982, which we shall set out here-in-below, all the Statutes and Regulations made under the Act of 1982 (un-amended) and in force immediately before the commencement of the Shere-i-Kashmir University of Agricultural Sciences and Technology (Amendment) Act, 1998 [“the Amendment Act of 1998”] were provided to remain in force in both the Universities, insofar as these were not inconsistent with the provisions of the Amendment Act of 1998.

12 Section 50-B, which was inserted by the Amendment Act of 1998, reads as under:

“50-B.Continuance of the existing Statutes and Regulations:

All the Statutes and Regulations made under the Sher-i-Kashmir University of Agricultural Sciences and Technology Act, 1982 and in force immediately before the commencement of the Sher-i-Kashmir University of Agricultural Sciences and Technology (Amendment) Act, 1998 shall so far as may be consistent with the provisions of this Act, continue to be in force in each University after such commencement”.

13 At this juncture, we deem it appropriate to set out Section 40 of the Act of 1982, which lays down the procedure for making the University statutes under Section 39. Section 40 reads as under:

“4. Statutes how made:

The Statutes under this Act shall be proposed by the Board and submitted to the University Council for approval. The Statutes, if approved, shall be submitted to the Chancellor for his assent and shall be valid only after the assent is received and notified by the Vice-Chancellor”

14 From a plain reading of Section 40 (supra), it is evident that the following steps are required to be undertaken before a Statute under Section 39 of the Act of 1982 can be said to have been made:

(i) The Statute shall be proposed by the Board of Management of the University;

(ii) It shall be submitted to the University Council for approval;

(iii) If it is approved by the University Council, the same shall be submitted to the Chancellor for his assent; and,

(iv) It shall be deemed to have been made only after it receives the assent of the Chancellor and is notified by the Vice-Chancellor.

15 A quick look on Section 39 of the Act of 1982, which deals with the scope of Statutes, would indicate that matters such as classification, qualification and manner of appointment, terms and conditions of service, and duties of teachers, and other non-teaching

staff of the University, are to be governed by the Statutes made in terms of Section 40 of the Act, reproduced hereinabove.

16 Having understood the relevant provisions of the Act of 1982, we now proceed to examine the case as was set up by the respondents before the Tribunal.

17 Vide Notification No. 01 of 1994 dated 08.04.1994, the Vice-Chancellor of SKUAST, as it existed prior to the Amendment Act of 1998, notified additions/amendments to the SKUAST Statutes, 1983. This notification was issued in compliance with the procedure laid down in Section 40 of the Act of 1982 reproduced above.

18 Admittedly, as per the amendments carried out to the Statutes in terms of Notification dated 08.04.1994, the post of *Artist-cum-Photographer* carried the pay scale of Rs. 5000-8000. However, upon the creation of SKUAST-Jammu, the then Vice-Chancellor, vide University Order No. 106 of 2000 dated 15.06.2000, created, *inter alia*, two posts of *Photographer-cum-Artist* in the pay scale of Rs. 3050-4590. Although the power of the Vice-Chancellor to create the posts with the approval of the Board of Management is not in dispute, yet an argument was raised that the Vice-Chancellor could not have created the posts in a pay scale lesser than the pay scale prescribed by the University Statutes.

19 We find merit in the argument advanced by Mr. Abhinav Sharma, learned Senior Counsel appearing for the respondents, for the reason that any addition, modification, or amendment to the University Statutes referable to Section 39 of the Act of 1982 can be made only by

following the procedure laid down in Section 40 of the Act, which we have discussed hereinabove. We do not dispute the power of SKUAST-J to amend its Statutes and, for valid reasons, prescribe a pay scale for a post lesser than what was prescribed in the Statutes initially framed under the Act of 1982, prior to its amendment in the year 1998. We have already reproduced Section 50-B of the Act, which clearly provides that the existing Statutes and Regulations, which were in existence and were not inconsistent with the provisions of the Amendment Act of 1998, shall continue to remain in force in each University until these are amended by following the procedure prescribed under Section 40 of the Act of 1982. As a matter of fact, the University itself has, in so many words, admitted this mistake having been committed while issuing University Order dated 15.06.2000.

20 It also needs to be taken note of that similar mistake of prescribing a lesser pay scale for the post of Artist-cum-Photographer, than what was provided under the University Statutes, has not been committed by the SKUAST-K.

21 Mr. Masood Tabish was appointed as Artist-cum-Photographer with the mandate of performing similar and identical duties in the pay scale of Rs. 5000-8000 plus usual allowances by SKUAST-K vide University Order dated 26.04.2000. Be that as it may, we cannot lose sight of the fact that the respondents came to be appointed pursuant to their selection made by the petitioners in terms of Advertisement Notification No. 03 of 2001. The said Advertisement Notification clearly prescribed the pay scale of the post of Artist-cum-Photographer as Rs. 3050-4590. The pay scale indicated in the

notification was the same as prescribed by University Order No. 106 of 2000 (supra). Not only did the respondents accept their appointment in the pay scale of Rs. 3050-4590, but they also remained silent for almost five years.

22 It appears that when it came to the notice of the respondents that a similarly situated employee working as Artist-cum-Photographer in SKUAST-K was receiving salary in the pay scale of Rs. 5000-8000, it occurred to them to raise their grievance first before their employer and thereafter by way of SWP No. 1009/2008 before this Court. While SWP No. 1009/2008, seeking a direction to the petitioner-University to grant them the pay scale of Rs. 5000-8000, was pending adjudication before a learned Single Judge of this Court, the representation made by the respondents for similar relief came to be deliberated upon in the 6th Finance Committee meeting of the University. The Financial Advisor (Universities), vide his communication dated 16.03.2016, conveyed his concurrence for upgradation of the post of Artist-cum-Photographer. The matter was then placed before the Board of Management of the University, which also recommended the upgradation. Thereafter, the matter was placed before the University Council in its 15th meeting, wherein the Council approved the recommendations of the Board of Management and placed the matter before the Chancellor for assent. Here again, the procedure for making Statutes laid down in Section 40 of the Act of 1982 was followed and ultimately, after receiving the assent of the Chancellor of the University, a formal notification was issued by the Vice-Chancellor on 01.02.2017 revising the pay scale of the post of

Artist-cum-Photographer to Rs. 5000-8000 plus grade pay of Rs.4200 (pre-revised), now revised to Rs.9300-34800+GP 4200 with prospective effect.

23 In view of the aforesaid development, it is a foregone conclusion that the grievance raised by the respondents in their petition before the Tribunal was genuine and was acknowledged as such by the petitioners also. However, while granting them relief by revising the pay scale of the post in question, the benefit was conferred upon the respondents only with prospective effect, i.e., from the date of upgradation of the post.

24 The Tribunal has considered the aforesaid aspect in its right perspective and has rightly come to the conclusion that the post of Artist-cum-Photographer could not have been notified for selection in the pay scale of Rs. 3050-4590, nor could the petitioners have created the said post in a pay scale lesser than the one prescribed under the University Statutes. For the detailed discussion made hereinabove, we fully concur with the view taken by the Tribunal. However, one aspect which has either escaped the attention of the Tribunal or has been deliberately skipped to avoid a decision thereon is that, prior to the filing of WPC No. 2153 (TA No. 204), the respondents had already approached this Court by way of SWP No. 1009/2008 seeking similar relief i.e, grant of the pay scale of Rs. 5000-8000 retrospectively w.e.f. the date of their appointment. The said petition was dismissed as withdrawn vide order dated 11.10.2018, with liberty granted to the respondents to file a fresh petition only on a fresh cause of action. Whether or not the subsequent petition has been filed on a fresh cause

of action was a question which was required to be addressed by the Tribunal, but the same appears to have been skipped.

25 Prima facie, we find substance in the argument advanced by Mr. Anil Khajuria, learned counsel for the petitioners, that the second writ petition filed on the same cause of action and seeking the same relief was barred by the principle of *res judicata*. However, on a careful reading of order dated 11.10.2018 passed in SWP No. 1009/2008, it is evident that the said writ petition was dismissed as withdrawn on the basis of a written application filed by the respondents. In the said application, the respondents have very clearly pleaded that their primary grievance regarding the upgradation of the post in question has been redressed by issuance of Order dated 01.02.2017, whereby the post of Artist-cum-photographer has been pgraded to the pay scale of Rs. 5000-8000 (pre-revised) and Rs. 9300–34800+4200 (revised). However, the upgradation has been ordered prospectively, thereby depriving the respondents of the legitimate benefits accruing therefrom. It is specifically pleaded that the respondents have been granted only partial relief and, therefore, they would like to pursue the remaining relief by filing a fresh writ petition.

26 It appears that this Court, while allowing the application and permitting the respondents to withdraw their writ petition, restricted the liberty to file a fresh writ petition only on a fresh cause of action. The operative part of the order dated 11.10.2018 deserves to be noticed and is accordingly reproduced here-in-below:

“For the reasons assigned in the application, prima facie grounds have been made out for indulgence of this Court

to allow the application and permit the petitioners to withdraw the petition with liberty to file a fresh one. Accordingly, this application is allowed and the writ petition titled as "Sat Paul and another Vs. Sher-e-Kashmir University of Agricultural Sciences and Technology and another", bearing SWF No.1009/2008 is dismissed as withdrawn along with connected IA if any, with liberty to the petitioners to file a fresh writ petition on fresh cause of action, if same is permissible within the parameters of law. Interim direction, if any, shall stand vacated”

27 From a reading of order (supra), it clearly transpires that this Court has allowed the application of the respondents and permitted them to withdraw SWP No. 1009/2008 with liberty to file a fresh one. However, inadvertently, the liberty to file a fresh petition has been restricted to a fresh cause of action. Be that as it may, the issuance of the University order dated 01.03.2017, upgrading the post in question prospectively, constituted a cause of action that accrued during the pendency of SWP No. 1009/2008. Therefore, two options were available to the respondents: (i) to amend the pending writ petition, or (ii) to file a fresh writ petition. The respondents chose the second option.

28 Viewed from any angle, we do not find that the subsequent petition filed by the respondents is hit by the principle of *res judicata* or barred by the dismissal of the earlier writ petition as withdrawn with liberty to file a fresh one only on a fresh cause of action. We, therefore, overrule the argument advanced by Mr. Anil Khajuria on this aspect of the matter.

29 Having found no infirmity in the findings of the Tribunal returned on facts and law obtaining in the case, we are, however, of the

view that the respondents cannot be held entitled to arrears on account of upgradation of the post in question from the date of their appointment. The Hon'ble Supreme Court in *Union of India v. Tarsem Singh*, (2008) 8 SCC 648, has held that in case of belated pension petitions, relief relating to pay fixation or upgradation may be granted, but the arrears payable thereunder should ordinarily be confined to a period of three years prior to the filing of the writ petition.

30 Applying the aforesaid principle to the facts of the present case, we are of the considered view that it would be in the fitness of things, and also in consonance with law, that the arrears payable to the respondents, upon holding that the post to which they were appointed carried the pay scale of Rs. 5000-8000 (pre-revised) *ab initio*, shall be restricted to three years prior to the filing of SWP No. 1009/2008.

30 In the above premises, this petition is disposed of by providing as under:

(i) The posts of Artist-cum-Photographer shall be deemed to have been created in the pay scale of Rs. 5000-8000 (pre-revised) and Rs.9300-34800+GP 4200 (revised) right from the beginning;

(ii) The respondents shall be entitled to fixation of their pay in the scale of Rs. 5000- 8000 (pre-revised) and Rs.9300-34800+GP 4200 (revised) with effect from 21.04.2003, i.e., the date of their appointment.

(iii) They shall be entitled to all consequential benefits, excluding arrears of salary for the period from the date of their appointment till three years preceding the filing of SWP No. 1009/2008.

(iv) The entire exercise shall be completed by the petitioners within a period of three months from today, failing which the entire arrears payable to the respondents shall carry interest at

the rate of 6% per annum, to be calculated from the date of expiry of the aforesaid three-month's period.

The judgment of the Tribunal stands modified to the aforesaid extent.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
11 .09.2025
Sanjeev

Whether the order is speaking: Yes
Whether the order is reportable: Yes

